IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.535 OF 2004

Mr.Nagji Devji Nissar ..Appellant.

V/s.

Asstt. Commissioner of Income-tax ..Respondent.

Mr.B.G. Vaidya i/b. Aasifa Khan for appellant.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 26TH JULY, 2007.

P.C. :-

1. Appellant / assessee have filed this appeal under section 260A of the Income Tax Act stating that the following questions of law arise out of the order of I.T.A.T. dated 17/12/2003 ;-

1. Whether on the facts and circumstances of the case and in law, the findings of the Tribunal are perverse inasmuch as the same are based on conjectures, surmises and suspicion and without any valid or legal material on record to hold that the said parties are the benamidars of the appellant ?

2. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in upholding the order of the A.O. wherein the said 24 parties were held to be benamidars of the appellant ignoring the relevant evidence and material brought on record ?

3. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in confirming the addition of Rs.2,16,598/- for A.Y. 1987-88, Rs.2,15,294/- for A.Y. 1988-89 and Rs.7,22,729/- for A.Y. 1989-90 being income

earned by the benamidars as the income of the appellant ?

4. Whether on the facts and circumstances of the case and in law, the appellant can be said to have discharged its onus of proving that the said 24 parties were not benamidars of the appellant and that the income earned during the relevant assessment years by the said person did not belong to the appellant ?

5. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the appellant has created bogus income-tax files of the benamidars in order to dilute his profit and had utilised their capital for his own benefit ?

6. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in placing due reliance on the statement dated 12.08.1989 after the same has been retracted by the appellant ?

7. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that no cogent reason for the retraction of the statement given under 132(4) has been given by the appellant ?

8. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in coming to the conclusion that it is appellant's own money which was invested in the share transactions in the names of the appellant's near relatives and the capital created in the names of 24 persons in the income-tax assessment records was utilised for the benefit of the appellant himself ?

2. The assessment years involved herein are AY 1987-88, 1988-89 & 1989-90.

3. The basic question raised in this appeal is whether the Tribunal was justified in deleting the additions made by the assessing officer based on the

statement of the appellant under section 132 (4) of the Income Tax Act, 1961 on 12/8/1989.

4. Mr.Vaidya, learned counsel for the appellant referring to the order passed by C.I.T. (A) submitted that in the present case the assessee has successfully established that the admission contained in the statement recorded under section 132 (4) of the Income Tax Act was erroneous and, therefore, in the light of the retracted statement of the petitioner, the Tribunal ought not to have sustained the additions made in the hands of the petitioner.

5. On perusal of the statement of the petitioner recorded under section 132 (4) of the Act on 12/8/1989, we are of the opinion that on the facts of the present case, the Tribunal was justified in discarding the retraction made by the assessee and based on the cogent and reliable admission of the assessee, holding that the funds invested in the shares belonged to the assessee. In our opinion, the findings recorded by the Tribunal do not give rise to any substantial question of law.

6. In this view of the matter, we do not see any merit in the appeal and the same is hereby dismissed.

(F.I.REBELL0, J.)

(J.P.DEVADHAR, J.)